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## The Fiscal Note Process: An Overview

Maine State Legislature

Office of Fiscal and Program Review

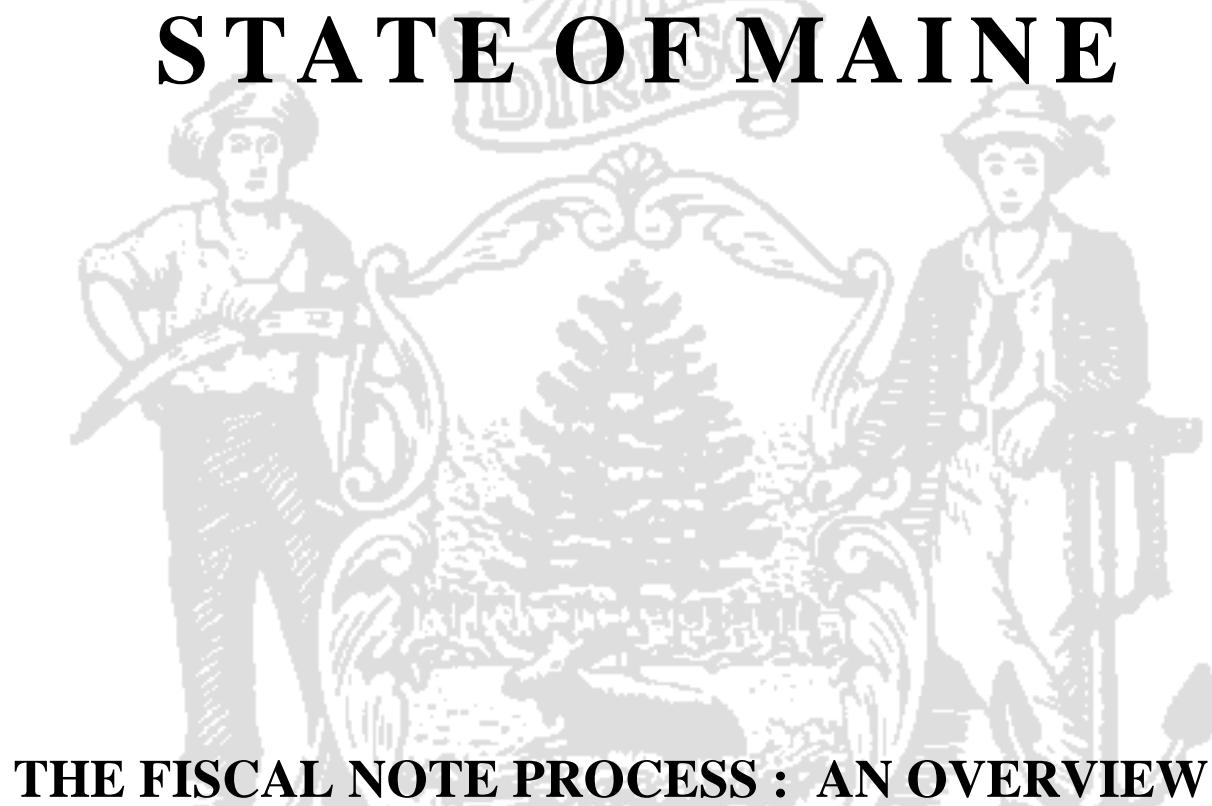
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# STATE OF MAINE

## THE FISCAL NOTE PROCESS : AN OVERVIEW

*Maine State Legislature  
Office of Fiscal and Program Review  
Updated for the 124<sup>th</sup> Legislature  
February 2009*

# THE FISCAL NOTE PROCESS: AN OVERVIEW

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## **I. Introduction**

Fiscal notes are brief descriptions of the effect of a bill or amendment on the finances of Maine State Government. They are prepared by the Office of Fiscal and Program Review (OFPR), a non-partisan staff office of the Legislature. For original printed bills, preliminary fiscal impact statements, or in limited circumstances fiscal notes, are distributed as separate documents from OFPR to the bill's sponsor and the committee of reference. Fiscal notes for committee amendments and floor amendments are distributed with the printed amendments as required by the Legislature's Joint Rules. Fiscal notes are intended to accurately and objectively describe the fiscal impact of bills and amendments so that the Legislature can make informed decisions with respect to state and local government finances.

## **II. Purpose of Fiscal Notes**

The Legislature added fiscal notes to its Joint Rules for the 103<sup>rd</sup> Legislature beginning in 1966. It decided that the information contained in fiscal notes describing the impact of a bill on the finances of state government was very important and should be available to guide them in their deliberations. OFPR and its predecessor, the Legislative Finance Office, have been responsible for developing objective assessments of the fiscal impact of legislation and providing non-partisan fiscal information to the Legislature. Certain budget and financial restrictions on the operation of state government also make it very important to track all legislation with a fiscal impact on state government.

### **Fiscal Information for Legislators**

The primary function of a fiscal note is to inform Legislators of a piece of legislation's financial impact on State Government (i.e. the costs, savings and/or revenue increases or decreases) and the costs incurred by local units of government. This information has become an important part of the debate on bills and amendments, particularly as the State weathered some tight fiscal years. In some cases, the fiscal impact of a bill or amendment is obvious and straightforward. A bill may simply represent an appropriation of funds to an agency for a specific purpose. However, even these simple bills may have fiscal impacts beyond the specific dollar amount appropriated in a given fiscal year. The appropriation may represent only partial funding for a new program, it may represent the state matching requirement for federal funds or it may have a revenue impact associated with the appropriation of those funds. Fiscal notes provide that information to Legislators so they can better understand the fiscal impact of a bill or amendment when making decisions.

### **Balanced Budget Requirements**

Article IX, Section 14 of the Constitution of Maine prohibits the State from incurring debt above \$2 million (except for some very specific reasons related to insurrection, invasion or war, etc.) without submitting the proposed obligation to referendum. Maine Revised Statutes Title 5, Section 1664 also requires the Governor to submit budget proposals that "..... show the balanced relations between the total proposed expenditures and the total anticipated revenues...." Finally, Maine Revised Statutes Title 5, Section 1668 authorizes the Governor to "temporarily curtail allotments equitably so that expenditures will not exceed the anticipated income and other available funds." Only temporary borrowing for cash flow purposes within a fiscal year is

authorized. These provisions effectively create a requirement for a balanced budget, particularly for the General Fund and Highway Fund.

Fiscal notes play an important role in this approach to state government budgeting. Bills and amendments which include costs or savings (including revenue effects) to state government are identified as they go through the legislative process. Fiscal Notes combined with certain tracking/tabling procedures allow the Legislature to coordinate the fiscal impact of individual bills with the budgetary process and maintain a balanced budget.

### **Special Appropriations Table, Special Highway Table and Special Study Table**

The Legislature has established procedures for tracking and making sure bills that affect the General Fund or the Highway Fund are coordinated with the overall budget decisions for these funds, given the balanced budget constraints. Key components of these procedures are the Special Appropriations Table and the Special Highway Table. These tables set aside bills affecting the General Fund and the Highway Fund and defer decisions on these bills until the end of a Legislative session after decisions on the budget bills have been made. Depending on the available resources, bills are often amended off the “table” to reduce or eliminate costs or are recommended Ought Not to Pass (ONTP) by the Appropriations Committee, Transportation Committee, and, on occasion, Legislative Leadership. Appendix A provides a description of these tables, their roles in the budget processes and the types of bills that are tabled. Fiscal notes describing the impact of bills on all funds play an important role in identifying which bills should be placed on either the Special Appropriations Table or the Special Highway Table.

It is important to note that bills affecting the General Fund and the Highway Fund are placed on these tables just prior to final enactment of the bill. Individuals following a particular bill should be aware of its fiscal impact and the potential for it to be placed on one of these tables. Many legislators and interested members of the public have been disappointed to find that a bill which may have been reported unanimously out of committee and sailed easily through both houses was placed on one of these tables only to die at the close of a legislative session because the decision was made not to “fund” the bill. Therefore, the Office of Fiscal and Program Review urges those interested in a particular bill to understand its fiscal impact and whether that impact will place it on one of these tables.

In addition to the Special Appropriations Table and the Special Highway Table, the Legislature added the Special Study Table to its Joint Rules beginning with the 119th Legislature, based on the recommendation by the Special Committee on Legislative Rules that a formal study table be established on which all legislative study requests be placed. Unlike the Special Appropriations and Special Highway Table, bills proposing to establish studies may be placed on the Special Study Table in either the House or the Senate. The Legislative Council reviews all study bills, including Joint Orders, and sets priorities for allocation of budgetary and staff resources.

### **Other Budget Requirements**

The fiscal note process of identifying the fiscal impact of legislation, while most important for bills affecting the General Fund and Highway Fund, is also important for the proper implementation of bills affecting other funds such as dedicated revenue accounts and federal expenditures fund accounts. Title 5, Chapters 145 and 149 set out some of the limitations

for expenditures from these other funds. These types of accounts may not incur expenditures unless sufficient cash is available within the account or fund. An additional restriction requires legislative allocation of funds before the Bureau of the Budget may authorize allotments and expenditures. Allotments and expenditures may be authorized in excess of the legislative allocation in certain circumstances, but if no base allocation exists for the program, expenditures may not be made.

### **III. Fiscal Note Preparation**

Joint Rule 312 of the 124th Legislature provides the authorization for fiscal notes. It states as follows:

**“Rule 312. Fiscal Notes.** Every bill or resolve that affects state revenues, appropriations or allocations or that requires a local unit of government to expand or modify that unit’s activities so as to necessitate additional expenditures from local revenues and that has a committee recommendation other than “Leave to Withdraw,” “Ought Not to Pass” or “Referral to Another Committee” must include a fiscal note. For a bill or resolve not yet reported out and upon request of a majority of the committee, the Office of Fiscal and Program Review shall meet with the committee at a work session to present its analysis and provide copies of the written materials relied upon by the office to prepare that fiscal note. The committee clerk shall provide the sponsor of the bill or resolve with prior notification of the work session. The committee clerk shall provide the Office of Fiscal and Program Review with a copy of all testimony and other materials received by committee on the bill or resolve whenever the committee recommendation is other than “Leave to Withdraw,” unanimous “Ought Not to Pass” or unanimous “Referral to Another Committee.” The fiscal note must accompany the committee report as it is reported out of committee. Any subsequent amendment introduced that would affect the fiscal impact of the original bill must also include a fiscal note. The Office of Fiscal and Program Review has the sole responsibility for preparing all fiscal notes.”

This joint rule was amended from the 123rd Legislature’s version by adding a requirement that OFPR, if requested by a committee, present its analysis and copies of written materials used to prepare a fiscal note. This presentation must be at a public work session for which the sponsor has been given prior notice from the committee clerk. This change formalizes a process to explain the fiscal note. This is something OFPR would have done anyway at the request of a committee, but this ensures that the sponsor is aware of the work session on the fiscal note.

The other change added by the 124<sup>th</sup> Legislature was a requirement that the committee clerk provide OFPR with a copy of all testimony and written materials of a bill or resolve that receives a favorable recommendation. This addition was intended to make sure that OFPR has access to the information presented by the sponsor and others at public hearings and work sessions.

### **Role and Organization of OFPR**

The last sentence of Joint Rule 312 places sole responsibility for preparing fiscal notes with OFPR, one of the non-partisan legislative staff offices. OFPR’s responsibilities, in addition to fiscal note preparation, include: staffing the Joint Standing Committees on Appropriations and

Financial Affairs and Taxation; jointly staffing the Joint Standing Committee on Transportation; and providing the Legislature with fiscal research and analyses.

Each analyst within OFPR is assigned specific departments and agencies that are grouped within policy areas for all responsibilities, including budget analyses and fiscal note preparation. Policy areas are groupings of similar departments and agencies that generally align with the policy committees of the legislature. OFPR has been organized in this manner so that analysts, over time, gain a greater degree of understanding of the programs and agencies in their respective policy areas. A listing of the analysts within OFPR and their policy area assignments is available on OFPR's web page at: <http://www.maine.gov/legis/ofpr/contact.htm>.

## **Role of Departments and Agencies**

Although the Legislature's Joint Rules specify that OFPR has the sole responsibility for preparing fiscal notes, state departments and agencies play an important role in the fiscal note process. Departments and agencies charged with implementing a legislative change typically have very specific knowledge of the programs and the effect that proposed legislation may have on those programs. This expertise and program specific knowledge is a very important resource. OFPR utilizes this expertise as part of its analysis of proposed legislation and has formalized department and agency input into the process.

Departments and agencies are expected to review all legislation for an impact on their programs. OFPR has asked that departments and agencies submit an estimate of the fiscal impact of the legislation to OFPR five working days prior to the scheduled public hearing on the bill. OFPR considers the estimates submitted by departments and agencies as part of its fiscal note analysis. However, these estimates submitted by the departments and agencies are not fiscal notes. As noted earlier, fiscal notes are prepared only by OFPR pursuant to Joint Rule 312 of the Legislature. Appendix F describes the responsibilities of departments and agencies in the fiscal note process in greater detail.

## **Other Sources of Information**

Although departments and agencies play a major role in the fiscal note process, they are not the only sources of information used by OFPR to develop fiscal notes. OFPR analysts must use their own knowledge of the departments and agencies to assess the accuracy of information submitted by departments and agencies and to finalize an objective, non-partisan fiscal note.

In the event that the information submitted by departments and agencies is suspect or is challenged or departments and agencies do not have sufficient information, OFPR may access a number of other sources of information to refute, confirm and/or supplement department and agency information. These sources include:

- Executive, judicial and legislative staff in other states;
- Federal Government sources
- Lobbyists and lobbying sources;
- Local government sources;
- Maine legislators and other Maine legislative staff; and
- National Conference of State Legislatures, Council of State Governments and other similar organizations.

Other important information resources available to OFPR include:

- AdvantageME
  - the State's automated financial management system that accommodates accounting functions
- Data Warehouse
  - State's information warehouse that contains position, budgeting and accounting data
- Budget and Financial Management System
  - Bureau of the Budget information system for biennial budget information and annual work program data for state departments and agencies

#### **IV. Types of Fiscal Impacts Described in Fiscal Notes**

The fiscal impacts described in fiscal notes concentrate on the direct fiscal impact of the legislation on state government expenditures and revenue and the costs to local units of government. Fiscal notes do not try to assign a monetary value to the social benefits of a piece of legislation or conduct extensive modeling to determine the secondary and tertiary economic impacts (also known as “dynamic” analysis – see Appendix D for more discussion on this type of analysis). While these indirect impacts are not included in the fiscal note, it does not mean that they are necessarily neglected by legislators. There are ample opportunities for these considerations to enter the various debates on a bill. While only the direct fiscal impact is considered in the “funding” of a bill within the constraints of either the balanced budget requirements of the General Fund or Highway Fund budgets, these other considerations may play a role when the Legislature prioritizes bills.

The impact of a bill or amendment on the finances of state government described in fiscal notes may fall into several different categories. The impact of a piece of legislation may require additional funding for an agency to implement the requirements of the legislation, it may generate savings within an agency, it may generate revenue or it may decrease revenue. The timing of the fiscal impact must also be considered. Does the bill affect state finances during the current and immediately-ensuing fiscal biennium or only during future biennia? The fiscal impact of legislation must also be considered with respect to which fund it affects. These considerations are discussed below.

#### **Type of Funds Affected**

Government accounting uses funds and account groups for financial reporting purposes. A fund is a separate accounting entity with a self-balancing set of accounts to record expenditures, revenue, assets and liabilities. The General Fund, the largest of the State's operating funds, finances all State Government activities not otherwise segregated as a result of being funded by revenue designated by special regulations, restrictions or limitations imposed by the source of the revenue. The Highway Fund is a special “dedicated” fund as a result of a provision in the Maine Constitution limiting the expenditure of revenue derived from motor vehicle fuel taxes and fees. Other restrictions or regulations create the need for dedicated revenue funds, the Federal Expenditures Fund, the Federal Block Grant Fund, Enterprise Funds,

Internal Service Funds, Debt Service Funds and Trust and Agency Funds. The analysis involved in developing a fiscal note for a bill or amendment must consider which of the State's numerous funds are affected in terms of any revenue generated or lost, any expenditures required to implement a bill or costs savings generated by a proposal. Unless specified in the bill, the impact is assumed to be a General Fund impact.

### **Costs without Appropriations or Allocations**

Fiscal notes will identify costs in legislation even if there is no appropriation or allocation in a bill. If OFPR's analysis indicates an original bill without appropriations or allocations will require positions or other expenditures to accomplish the intended outcome, the fiscal note will be written to identify what funding would be required. If analysis of a committee or floor amendment indicates funding is required, OFPR will draft an appropriation or allocation and insert it into the bill and the fiscal note will be written to indicate funding is in the bill. It is important to emphasize that a committee or sponsor of a floor amendment has the authority to decide whether or not to include the recommended funding. The fiscal note will then react to that decision. OFPR's role is to analyze, recommend and, barring objection, provide the funding required to accomplish a bill's objectives. If costs are identified but recommended funding is rejected, the fiscal note will be rewritten to indicate there is still a cost to perform the new requirements, that no funding was provided and that there may be a negative impact on other programs or services.

### **Timing of the Fiscal Impact**

Bills must be analyzed with respect to the timing of their impact. Budget biennia are two-year periods beginning July 1 of odd numbered years. In addition to appropriating and allocating to the current fiscal year that ends June 30, 2009, the 124th Legislature will appropriate and allocate funds effective for the budget biennium that begins July 1, 2009. These costs, as well as savings generated through deappropriations and deallocations, are shown in fiscal notes and are generally described as "current" costs or savings. Revenue increases or decreases for the same period are also reflected in fiscal notes and are generally described as "current" revenue increases or decreases.

Public Laws of 1995, Chapter 368, Part EE (5 MRSA, §1665, sub-§6) added a requirement that departments and agencies submit fiscal impact statements that describe the revenue and expenditure effects of bills for the current biennium and for the following biennium. OFPR identifies the "future" costs/revenue effects that occur outside of the current fiscal biennium with emphasis on effects that exceed the normal growth of the appropriations, allocations and/or revenue estimates identified for the current biennium in the fiscal note. For the 124th Legislature, fiscal notes will present estimated costs through the fiscal year ending June 30, 2013. If there are additional substantial impacts further in the future, the fiscal note will indicate those as well.

### **Insignificant/Minor Costs or Savings and No Fiscal Impacts**

Fiscal analysis of proposed legislation may identify bills with insignificant or no fiscal impact. These bills typically have represented just over 40% of the total number of printed bills. Bills and amendments that add minor costs or minimal new requirements on state government programs and agencies and, by themselves, do not require the appropriation or allocation of

funds are identified as “Minor Costs”. This type of bill has also been referred to as a “cost absorbed” bill. Bills that generate minor savings or increase revenue by minor or negligible amounts are identified as “Minor Savings”.

The determination of what is a minor cost, savings, or revenue effect depends primarily on the program or revenue source affected. The size of program or revenue source is a primary determinant of whether a fiscal impact is minor and can be absorbed within existing budgeted resources. There is no set cut-off amount that determines whether a fiscal impact can be classified as “minor” or “insignificant.” OFPR must make a judgment based on the individual circumstances surrounding the legislation and the programs affected.

There are some bills (approximately 15 to 20% of the bills introduced) that fall into the category of having no fiscal impact on state government. This type of bill includes, but is not limited to, those that affect non-governmental agencies in such a way as to have no direct impact on state government costs or revenues or that correct errors and inconsistencies in the laws. For those bills that fall into this category, no fiscal notes are required. In practice, OFPR may issue a preliminary fiscal impact statement for the original bill indicating there is no fiscal impact but no fiscal note would be publicly released for amendments with no fiscal impact.

### **Direct Costs Incurred by Local Units of Government**

The passage of the Constitutional Amendment to restrict unfunded state mandates on local units of government has had a significant effect on the content of fiscal notes since the 1st Regular Session of the 116th Legislature. Until that time, OFPR was required by statute (3 MRSA, section 163-A, sub-section 12) to include in the fiscal note a statement of the costs to municipalities and counties for implementing or complying with proposed law, subject to the limit of the information provided to OFPR. In actual practice, because information on the local costs was not made available to OFPR, very few statements of costs to municipalities and counties were included in fiscal notes.

The Constitutional Amendment, which requires the State to fund at least 90% of the cost of a state mandate unless two-thirds vote of each house provides an exemption to this requirement, has effectively made the local government costs of state mandates potentially state government costs. Since the 116th Legislature the costs of state mandates have been identified in fiscal notes. (Appendices B and C provide more detail on the description of what constitutes a state mandate and the procedures OFPR follows with respect to estimating costs to local units of government).

### **Impacts on the Correctional and Judicial Systems**

The Department of Corrections (see 34-A M.R.S.A., §1402, subsection 9) and the Judicial Department (see 4 M.R.S.A., §17, subsection 17) are required to submit statements describing the impact of a bill on the correctional system and the judicial system, respectively. These requirements were made much more stringent by amendments added by the 123<sup>rd</sup> Legislature in PL 2007, chapter 240, Part YYY, adding additional information gathering requirements and better annual estimates. OFPR considers these statements when analyzing a bill or amendment and includes a summary of the impact on the correctional and judicial systems in its fiscal notes.

## **V. Form and Distribution of Fiscal Notes**

Fiscal notes may take several different forms depending on the type of legislation which they are describing. The goal of OFPR is to distribute this information to the appropriate decision makers in a timely manner so that the information contained in the fiscal note is properly considered at all stages of a bill's or amendment's progress through the Legislature. Fiscal notes for amendments and committee reports and preliminary fiscal impact statements for original bills are accessible through the Legislature's web site. Provided below is a description of the various forms fiscal notes may take. Appendix E provides samples of each of these forms.

### **Original Printed Bills or Legislative Documents (LDs)**

OFPR reviews each printed bill or Legislative Document (LD), although not required by the Legislature's Joint Rules at this initial stage of a bill's progress through the Legislature. Joint Rule 312 only requires a fiscal note for bills that have received a favorable committee report. However, OFPR often puts a substantial amount of effort into bills at an early stage for several reasons. First, it gets this information to the committees so that it may be considered during the committees' deliberations. Second, this early analysis helps OFPR respond more quickly to subsequent requests for fiscal reviews of amendments when a committee is ready to report out a bill. Third, printed bills are also more widely distributed than amendments (particularly proposed amendments), which makes it easier for OFPR to gather input from various sources as part of its analysis. OFPR tries to provide preliminary fiscal impact statements to committees and sponsors prior to public hearings on bills based on the information that it has been able to gather up to that point. These statements, which are subject to change based on new information gathered as bills work their way through the committee process, are intended to identify fiscal issues early in the process so that they can be addressed, if necessary, by the committee.

In some unusual circumstances, an original bill may include an actual fiscal note. This occurs if it is known that a bill is not going to be referred to committee or if the bill represents a committee report. The fiscal note would be included and printed as part of the bill and would appear immediately after the summary.

### **Committee Amendments**

Joint Rule 312 requires that every bill with a fiscal impact being reported out favorably from a committee must have a fiscal note attached. OFPR works closely with committee staff to react to committee reports on bills and turn them around and get this report to the full Legislature as quickly as possible after the committee has taken final action. After reviewing drafts of the committee report(s), OFPR develops a fiscal note or fiscal notes if there is more than one favorable report from the committee. The fiscal note for a committee amendment describes the fiscal impact of the entire bill as amended by that committee amendment, not just the incremental change. The fiscal note is made available to committee staff electronically as an Excel file. Additionally, it is printed on the back of the committee amendment and distributed with the amendment.

### **Floor Amendments**

Joint Rule 312 also requires floor amendments to receive a fiscal note. Every floor amendment is reviewed by OFPR prior to printing. Drafts are received from the Office of the

Revisor of Statutes and receive immediate attention. The fiscal note for a floor amendment is attached in a similar manner to the committee amendment. However, floor amendments only address or describe the fiscal impact of the amendment and not the impact of the entire bill as amended. In other words, they are incremental rather than comprehensive or cumulative. An exception to this would be the case where a committee amendment is released without a fiscal note in error. If such an omission occurs, a separate floor amendment can be drafted with a comprehensive fiscal note attached to avoid the bill being ruled out of order on the floor of the House or Senate for lacking a fiscal note.

### **Engrossed Bills**

OFPR reviews bills after they have been engrossed and distributes a fiscal note describing the fiscal impact of the bill as engrossed. The engrossed copy of a bill is how the bill will appear in the published laws if approved by the Legislature and the Governor. The distributed copy of the engrossed bill contains no summary or fiscal note. Fiscal notes for engrossed bills are distributed separately to each house of the Legislature describing the fiscal impact of the bill as engrossed. This fiscal note reflects the final “scoring” of a bill’s impact on the State’s budget and incorporates the incremental effects added by accepted floor amendments.

## **VI. Conclusion**

This overview summarizes the major aspects of the fiscal note process so that legislators, departments and agencies and the general public have a better understanding of this process. One of the most important points to stress is that any questions regarding individual fiscal notes or the fiscal note process by anyone, Legislator, state agency representative, or member of the general public should be brought directly to OFPR’s attention. OFPR will explain the methodology and assumptions used to develop a fiscal note on any bill or amendment. OFPR also stands ready to listen to concerns about specific aspects of the fiscal note process and encourages your comments on ways to improve upon it. The office is located in Room 226 of the State House. The telephone number is (207) 287-1635.

## **APPENDIX A**

### **Special Appropriations Table, Special Highway Table and Special Study Table**

# **Special Appropriations Table, Special Highway Table and Special Study Table**

## **I. Introduction**

The act of tabling a bill or motion is the process of setting aside or deferring action on the bill or motion. The Special Appropriations Table and the Special Highway Table are special processes in the Maine State Senate for deferring actions on bills affecting General Fund appropriations and/or revenue and Highway Fund allocations and/or revenue, respectively. These tables were designed to track legislation affecting the General Fund and Highway Fund; to provide equitable treatment for these bills; and to maintain balanced General Fund and Highway Fund budgets.

These special tables are established by Senate Orders. These orders are printed in the Senate Calendar, usually very early in the First Regular Session.

Special Appropriations Table - Created by Senate Order, usually on 1st legislative day of new session

“Ordered, that all Bills and Resolves carrying or requiring an appropriation or involving a loss of revenue that are in order to be passed to be enacted, or finally passed, shall, at the request of a member of the Committee on Appropriations and Financial Affairs, be placed on a special calendar to be called up for consideration only by a member of the Committee.”

Special Highway Table - Created by Senate Order, usually on 1st legislative day of new session

“Ordered, that all Bills and Resolves carrying or requiring an appropriation of highway revenue or involving a loss of highway revenue that are in order to be passed to be enacted, or finally passed, shall, at the request of a member of the Committee on Transportation, be placed on a special calendar to be called up for consideration only by a member of the Committee.”

## **II. Purpose of the Special Appropriations Table and Special Highway Table**

These tables have been established to provide the Joint Standing Committee on Appropriations and Financial Affairs and the Joint Standing Committee on Transportation with methods of making sure that the General Fund and the Highway Fund, respectively, are maintained as balanced budgets. They also place the decisions for bills affecting the General Fund and the Highway Fund with the Committees charged with the oversight of those specific funds, rather than distributing these decisions to other policy committees.

Note: Reference to “requiring an appropriation” in these orders has been interpreted by the Office of Fiscal and Program Review to mean current biennium costs, future costs, and potential costs.

These tables provide a formal method for tracking the effect of legislation on the General Fund and Highway Fund. Tracking these bills could be done on an on-going basis and be factored into the decision-making processes of both budgets. However, this on-going tracking

process would make the budget decisions of the Joint Standing Committees on Appropriations and Financial Affairs and Transportation reactive rather than proactive. The budget bills usually include the major financial decisions regarding the General Fund and Highway Fund. Therefore, to maintain their central role in the budget decision-making process, the Legislature has decided to defer action on most other bills affecting the General Fund and Highway Fund until after the budget bills have been reported out of their respective committees and enacted. Other bills with General Fund or Highway Fund impacts must compete equally for finite resources rather than on a first come, first served basis.

### **III. Process of Tabling Bills**

The authorizing Senate Order passed early in the session specifies any senate member of the Joint Standing Committee on Appropriations and Financial Affairs may make the motion to set aside a bill on the Special Appropriations Table. The same rule applies to senate members of the Joint Standing Committee on Transportation for the Special Highway Table. Motions to place bills on either of these tables are made when the bill is pending final enactment in the Senate. The Senate Chairs of the Committee on Appropriations and Financial Affairs and the Committee on Transportation usually make the motions to table on the Special Appropriations and Special Highway Tables, respectively, but other members of those committees, in the absence of the chairs, may make motions to table bills on the Special Appropriations and Special Highway Tables.

### **IV. Role of the Office of Fiscal and Program Review**

The Office of Fiscal and Program Review (OFPR), a non-partisan staff office of the Legislature, provides the Legislature with fiscal research and fiscal notes and staffs the Joint Standing Committees on Appropriations and Financial Affairs, Taxation and Transportation. All bills with a fiscal impact are tracked through the fiscal note process administered by OFPR. Given its roles in the fiscal note process and the staffing of the Committee on Appropriations and Financial Affairs and the Committee on Transportation, OFPR has the role of notifying the members of the committees, usually through the respective Senate chairs, when a bill up for final enactment meets the criteria for placement on the Special Appropriations and Special Highway Tables.

OFPR produces reports about the bills and resolves on these tables. These reports summarize the expenditure and revenue impacts of each bill. OFPR also provides staff assistance to the Committee on Appropriations and Financial Affairs, the Committee on Transportation and Legislative Leadership during the final decision-making phases of the bills on these tables.

### **V. Types of Bills and Resolves to be Placed on These Tables**

Not all bills with fiscal impacts get placed on the Special Appropriations Table or the Special Highway Table. A general rule is applied by OFPR in making recommendations regarding whether a bill should be placed on these tables. If any bill or any portion of a bill includes a General Fund appropriation or deappropriation, a General Fund revenue reduction or any other General Fund cost, that bill should be set aside on the Appropriations Table. The same criteria applies for the Highway Fund Table. Bills that should be tabled include:

- Bills that include General Fund appropriations or Highway Fund allocations;
- Bills that include General Fund deappropriations or Highway Fund deallocations;
- Bills that reduce General Fund revenue or Highway Fund revenue; and
- Bills that increase future General Fund or Highway Fund costs or reduce future General Fund or Highway Fund revenues.

A bill that includes a General Fund appropriation or Highway Fund allocation that may be offset by additional General Fund or Highway Fund revenue, General Fund deappropriations or Highway Fund deallocations, will still receive a recommendation to be tabled even though the overall net impact could be positive to either fund.

If bills affect both the General Fund and the Highway Fund in such a way that a recommendation would be made to place the bill on both Tables, these bills will be recommended to be placed on the Special Appropriations Table.

The committees may decide to exempt a particular “emergency” bill from being placed on either of the funding tables. By tradition, the appropriate committee usually holds a public work session and specifically votes to exempt that bill from being placed on the respective table.

## **VI. Final Action on Bills and Resolves on These Tables**

### Special Appropriations Table

After the budget bills have been enacted or are pending enactment and the amount of funding still available for the table is known, the Joint Standing Committee on Appropriations and Financial Affairs reviews all bills placed on the table throughout the session and makes its decision on each. These decisions are made with a significant amount of input from other sources. Other committees are required, within 5 working days after reporting out all of their bills, to notify the Joint Standing Committee on Appropriations and Financial Affairs of their priorities of bills that are on the Special Appropriations Table. Leadership, sponsors and other interested parties are often involved in working out compromises or agreements for final disposition of bills on the table. Bills are passed as is, amended to change the cost or killed outright. There are no voting requirements specified in the joint order that created the table. By tradition, decisions are made by majority vote.

### Special Highway Table

The Special Highway Table decisions are made at approximately the same time as the Special Appropriations Table decisions. No other committees are required to submit priorities to the Transportation Committee and leadership does not usually get involved in the resolution of the Special Highway Table. As there are no voting requirements specified in the joint order, decisions are traditionally made by majority vote.

## **VII. Special Study Table**

Many potential studies are proposed during a typical legislative session. Although many are included in a bill when it is being worked in committee, others are created in response to offered bills that generate the desire for more information or other alternatives before enacting. The purpose of the Special Study Table is to prioritize among the studies so that limited financial and staff resources may be used in the most efficient and effective way. Typically studies are scheduled for the interim period between legislative sessions when staff and legislators are not overwhelmed with the business of the legislature. Bills may be placed on this table in either the House or Senate, usually by a member of the Legislative Council. The Special Study Table is essentially a function of the Legislative Council and as such, the Executive Director's office plays an important role in communicating with the Council throughout the process. As it does with the Special Appropriations Table and the Special Highway Table, OFPR helps monitor bills that may need to be set aside on the Special Study Table and facilitates the process by alerting Senate staff when it is aware a bill is arriving on the floor that needs to be tabled. Near the end of the session the Legislative Council reviews the studies and makes its decisions for expenditure of the legislative study budget dollars. Some studies will be amended, some funded, and others killed outright. If a study is recommended by the Council and is to be funded from a direct appropriation apart from the study budget, OFPR will help get the bill sent to the Special Appropriations Table where the additional costs may be considered and funded by amendment.

Special Study Table - Created by Joint Rule, usually on the 1st legislative day of new session

Joint Rule 353, §8:

“All joint orders or legislation proposing legislative studies regardless of funding source must be placed on a special study table in the House or Senate. The Legislative Council shall review the proposed studies and establish priorities for allocation of budgetary and staffing resources.”

**APPENDIX B**

**Fiscal Notes and Cost Estimates for State Mandates**

# **Fiscal Notes and Cost Estimates for State Mandates**

## **124th Legislature**

### **I. Mandate Identification on individual bills**

In addition to describing the fiscal impact on state government, a fiscal note (or preliminary fiscal impact statement) will also identify possible state mandates and may include a very rough estimate of costs and type of local unit affected. The initial fiscal note will not provide a detailed cost estimate unless sufficient information is provided at the same time as other fiscal information, e.g., if departments or state agencies have reliable data available which will allow an accurate estimate of the municipal or county costs. The Maine Municipal Association or other interested parties with data available to generate a reliable estimate of the local costs should forward that information directly to OFPR. Whether a proposal creates a state mandate under the Maine State Constitution is a legal question and while a fiscal note may identify a potential mandate, it is not a legal opinion. As with any other question of constitutional law relating to legislative proposals, the Legislature may want to seek appropriate legal advice on any questions concerning mandates.

### **II. Committee Reports for Bills with State Mandates**

If a bill that contains a mandate is going to be reported out favorably from a committee, a committee has several options. OFPR's level of analysis will depend on which of the following options a committee chooses:

- **Exempt the Bill by including a Mandate Preamble** - The committee may decide to exempt the mandate from the funding requirement by including a Mandate Preamble that requires a two-thirds favorable vote in both Houses. OFPR will normally provide a very rough estimate of the cost and scope of the mandate.
- **Reconsider Committee Report to remove the Mandate** – A committee may decide to eliminate the mandate by amending its report to remove the requirement that created the mandate. OFPR will work with the committee and staff to review the changes.
- **Fund the Mandate** - The committee may decide to recommend funding the mandate by including appropriate funding in the bill. For these committee reports, OFPR will provide a more detailed assessment of the total cost of the mandate.
- **Defer Decision on Funding the Mandate** - The committee may also decide to report the bill out without funding and without a Mandate Preamble. OFPR may include a rough estimate of the cost of the potential mandate in the fiscal note, similar to OFPR's treatment of original printed bills.

In the last two cases, the bills will normally be placed on the Special Appropriations Table and decisions regarding the funding will be deferred until the end of the session when the Joint Standing Committee on Appropriations and Financial Affairs makes decisions on bills placed on this table. If a bill with a state mandate is passed without funding or a mandate preamble, the local units of government affected will not be bound by the mandate.

### **III. Floor Amendments that include State Mandates**

Given the limited amount of time available to assess the fiscal impact of floor amendments, OFPR will identify but may not estimate the cost of potential mandates. If time permits, an estimate may be provided. If a potential mandate is identified on a floor amendment, the sponsor has the same options as a committee.

### **IV. Other Requests for Municipal Cost Estimates**

OFPR will attempt to provide estimates of the local fiscal impact of other non-mandate legislation as requested, resources permitting.

## **APPENDIX C**

### **A Brief Explanation of the “State Mandate” Law**

## A Brief Explanation of the “State Mandate” Law

The constitutional provision relating to state mandates (Article 9, §21), as applied pursuant to implementing legislation (30-A MRSA §5685) provides that the State may not require a local unit of government to expand or modify its actions so as to necessitate additional expenditures from local revenues, unless the State provides 90% of the funding for those new expenditures. Local units of government include cities, towns, plantations, counties, school units and other local governmental entities that are established under legislative authority to perform a public function and are funded by local revenues and administered by governing bodies that are responsible to the public. The provision applies to laws, rules or executive orders. The provision permits the State to create specific exemptions to the funding requirement. This is accomplished by legislation that includes a Mandate Preamble and that is passed by a two-thirds vote of both Houses.

Under the implementing law, the State may not meet its funding obligations by requiring a local unit of government to use funds previously appropriated to the unit for another purpose or by authorizing new local taxes or fees to be raised. State actions to comply with federal requirements need not be funded by the State, except to the extent that the State's requirements exceed the federal requirements.

In each fiscal year, a local unit of government must receive the required state funding prior to implementing a mandate or it is not obligated to conform to the mandate. State agencies must develop mandate payment distribution schedules for each mandate they administer. The schedules are designed with local input to periodically pay local units the costs of complying with mandates prior to incurring the additional costs.

When analyzing whether a law, rule or executive order represents a state mandate, at least two questions must be asked.

1. Does it require a local unit of government (see attached list of qualifying local governmental units) to expand or modify its activities?
2. If it does require such an expansion or modification of activities, does that requirement necessitate additional expenditures from local revenues?

**The following general statements about mandates are based on OFPR’s current understanding of the constitutional provision and the implementing law:**

- **The fact that a bill is introduced on behalf of and with the support of a local unit of government** does not affect the mandate analysis. If a bill imposes a mandate, local unit support does not remove that mandate.
- **Bills generating revenue** at the local level or net savings in aggregate are mandates if they include any requirements that may result in any local unit of government incurring additional costs to implement.

- **Bills establishing a new state requirement that some or all municipalities may already have implemented or bills prohibiting cuts in programs** are mandates even though many local units may be in compliance.
- **Bills of general applicability**, such as bills that affect employers generally or environmental regulations that are not directed at operations specific to local units of governments or bills that create new crimes or enhance the class of certain crimes, are not state mandates because they do not primarily affect a local unit's governmental activities.
- **Bills setting new standards for discretionary programs**, such as bills that require local units of governments to perform certain activities if those units choose to implement a particular program, are not state mandates because they do not actually require those local units of government to expand or modify their activities.
- **Bills reducing state subsidies** are not state mandates because reducing state subsidies alone does not actually require local units to expand or modify their activities.
- **Proposed constitutional amendments** are not state mandates because constitutional referenda are expressly excluded under the implementing legislation.

## I. Cost Estimation of Mandates

The Office of Fiscal and Program Review is the agency solely responsible for preparing all fiscal notes on bills and amendments introduced before the legislature. Since under the Joint Rules a bill must include a fiscal note if it includes a mandate, the Office of Fiscal and Program Review, by implication, is responsible for identifying and estimating the cost of potential mandates.

Some issues related to cost estimation of mandates include:

- Net costs versus component costs. Since the State may not meet its obligation to provide its share of state funding by authorizing a local unit to levy new fees or taxes, revenues from such sources are excluded from the calculation of local expenditures for which state funding must be provided. The fiscal impact of a mandate is calculated based on the additional expenditures necessitated by each required expansion or modification of activity.
- Funding of existing programs. If a mandate applies to an existing activity of some local units of government but a new activity for other units, the state must fund 90% of the cost to those units that already have implemented the required activity as well as those units that have not implemented the required activity.
- Timing of Funding. The timing of the costs to be incurred by local units of government is also very important. The implementing law requires the establishment of a payment distribution schedule for each funded state mandate so that payments

are received by a local unit of government prior to that unit having to make the required expenditures.

## **II. Rules and Executive Orders**

Executive Orders and routine technical rules that propose new mandates on local units of government are not voted on by the Legislature. The Executive Branch may not create exceptions to major substantive rules that do require legislative approval and the legislation providing for that approval can address any mandate issues raised by such rules.

## **III. Local Units of Government Covered by the “State Mandate” Law**

A Local Unit of Government, as defined by the implementing law, means any city, town, plantation, county, school administrative unit or governmental entity that is:

1. Created or authorized by special act of the legislature;
2. Established to provide public services;
3. Funded by local revenues;
4. Governed by a locally elected body or a body appointed by a municipality or county; and not an agency of State Government or other entity having statewide authority, jurisdiction or purpose.

Therefore, Local Units of Government include but are not limited to the following:

- All cities and towns;
- Counties;
- Plantations;
- School Administrative Units;
- Water Districts; and
- Sewer Districts.

Some examples of entities that are not included would be:

- The Unorganized Territories;
- The University of Maine System;
- The Maine Maritime Academy;
- The Maine Technical College System;
- The Maine State Retirement System; and
- The Maine Turnpike Authority.

**APPENDIX D**

**Role of Fiscal Notes in Revenue Recognition**

# **The Role of Fiscal Notes in Revenue Recognition**

## **I. Fiscal Notes or Revenue Forecasting Committee**

In addition to providing fiscal information on proposed legislation to improve the decision making process, fiscal notes establish the amounts of revenue in enacted bills that become part of the budget. While the Revenue Forecasting Committee (RFC) determines the official projections for pre-existing or “baseline” revenues based on economic and other factors, the fiscal note process determines the levels of revenue that come (legislatively) from statutory changes in newly enacted legislation. The amount of revenue recognized by the RFC and the amounts recognized through the fiscal note process combine to become the official amount of revenue available for expenditure in the budget for the General Fund, Highway Fund and Fund for a Healthy Maine. On occasion the line between which process, revenue forecasting or fiscal note, should determine a particular level of revenue has become blurred and a brief discussion of this issue follows.

By statute, the RFC estimates baseline revenues twice each year and releases formal reports on these on December 1<sup>st</sup> and May 1<sup>st</sup> of odd-numbered years and December 1<sup>st</sup> and March 1<sup>st</sup> of even-numbered fiscal years. These estimates represent what is expected to be collected based on current law. Revenue that may be generated or decreased from changes to current law is booked or “scored” in fiscal notes. Once the revenue impact of a statutory change has been initially booked in a fiscal note, that revenue becomes part of the baseline revenues and any subsequent projection of it is properly accounted for by the RFC. It has occurred in the past that legislation has been proposed that would change an existing estimate of revenue without changing any underlying statute that would cause a revenue amount to change. Such attempts to adjust baseline estimates of revenue legislatively (through fiscal notes) are inconsistent with the role of the RFC and jeopardize the bipartisan acceptance of the RFC process. The RFC does have a mechanism that allows it to convene a meeting to revise revenue when it believes its previous estimate may be substantially incorrect and this is preferable to using legislation to simply state that a particular revenue source shall be booked at a different level than was estimated by the RFC. OFPR will only recognize revenue in a fiscal note that is caused by a legislative change, such as increasing a tax or fee or by adding positions to collect additional revenue.

## **II. Static versus Dynamic Revenue Estimates**

Revenue estimates that do not take into consideration behavioral changes of any kind attributable to the passage of statutory changes would be considered static estimates. On the other end of the spectrum, revenue estimates that do consider behavioral changes that might be anticipated from statutory changes would be referred to as dynamic estimates. In the State of Maine, OFPR employs a modified form of dynamic forecasting in fiscal notes that could be referred to as “micro-dynamic” estimating, which considers some behavioral changes on individuals directly impacted by legislation but not behavioral changes that might change the economy as a whole, which could be called “macro-dynamic” estimating. This is especially important in evaluating tax legislation, where Maine Revenue Services (MRS), using sophisticated computer modeling, uses a micro-dynamic methodology to provide OFPR with the potential impact of tax legislation. There is no attempt to quantify any secondary or dynamic revenue changes that may come about from the impact of legislation on the overall economy.

For example, the fiscal note for a proposed substantial tax rate increase would consider the micro-dynamic effects of behavioral changes to avoid the tax but not try to adjust for any secondary macro-dynamic effects on the economy as a whole. Generally, this is a revenue recognition issue more likely to effect tax legislation than other areas. Proponents of tax proposals are often disappointed to find that a fiscal note will score a revenue loss for tax credits or exemptions but not attempt to offset the loss by booking a potential stimulus to economic growth from the proposal. The consideration of economic consequences in fiscal notes would greatly increase their complexity and move focus away from the direct impact of a proposal. If any bills were to be measured this way, fairness would dictate they all would need to be. Given the generally small impact economic analysis would have on 99.9% of the fiscal notes, OFPR has not invested in the additional resources or additional economic modeling capability that would make it possible.

### **III. Compliance/Enforcement Assumptions**

Another issue that has created some controversy in the past is the fiscal note treatment of bills that arise from audit adjustments and compliance. As the result of an audit the state may assess a taxpayer for an outstanding tax liability. That taxpayer may seek relief from the Legislature, resulting in a bill to change the law retroactively. An argument that often gets made is that there should not be a cost to passage of the bill because the tax was not being collected prior to the audit finding. However, the fiscal note would show a revenue loss because the baseline revenues already assume that there will be collections resulting from bringing taxpayers into compliance through audit adjustments and any retroactive change to tax law would negate the possibility of collecting those taxes.

### **IV. Timing Issues**

Fiscal notes will consider the timing of an impact of a statutory change so that it is consistent with expectations for behavioral changes that result. For example, a bill to cut sales tax rates by 50% on July 1 would be an incentive for taxpayers to delay purchases that would otherwise have occurred prior to July 1. The behavioral change, in this case delay of purchases, would be accounted for in the fiscal note and a revenue loss would be recorded for reduced sales tax collected prior to July 1.

### **V. Interaction Effects**

Consumers of fiscal notes will be advised that there can be an interaction between various proposals in a legislative session that cannot be accounted for in the fiscal notes for those proposals. Each fiscal note for a proposed piece of legislation will score that proposal against current law without regard for the possibility (or probability) that other proposals could be enacted. Summing the impacts expressed in the individual fiscal notes may not provide the true revenue gain or loss that would be obtained if all the bills pass. The revenue loss from a proposed income tax exemption in one bill would be greater than expressed by its fiscal note if another proposal to increase tax rates is enacted.

## **APPENDIX E**

### **Sample Fiscal Notes**

## **Sample Fiscal Note – Original Bill**



# 124th MAINE LEGISLATURE

**LD 5000**

**LR 9999(01)**

## An Act to Provide Sample Fiscal Notes

### Preliminary Fiscal Impact Statement for Original Bill

**Sponsor: Rep. Sample**

**Committee: Health and Human Services**

**Fiscal Note Required: Yes**

### Preliminary Fiscal Impact Statement

|                                   | <b>2009-10</b> | <b>2010-11</b> | <b>Projections<br/>2011-12</b> | <b>Projections<br/>2012-13</b> |
|-----------------------------------|----------------|----------------|--------------------------------|--------------------------------|
| <b>Net Cost (Savings)</b>         |                |                |                                |                                |
| General Fund                      | \$105,000      | \$150,000      | \$155,000                      | \$160,000                      |
| <b>Appropriations/Allocations</b> |                |                |                                |                                |
| General Fund                      | \$105,000      | \$150,000      | \$155,000                      | \$160,000                      |
| Other Special Revenue Funds       | \$0            | \$45,000       | \$45,000                       | \$45,000                       |
| <b>Revenue</b>                    |                |                |                                |                                |
| Other Special Revenue Funds       | \$0            | \$45,000       | \$45,000                       | \$45,000                       |

### Fiscal Detail and Notes

The Department of Testing will require a General Fund appropriation of \$105,000 in fiscal year 2009-10 and \$150,000 in fiscal year 2010-11 for a Senior Tester position and a Tester I position to prepare and conduct the tests required in section 2 of the bill. A \$45 fee on testing beginning in fiscal year 2010-11 will generate \$45,000 in Other Special Revenue Funds to fund an additional Tester I position in FY 2011.

## **Sample Fiscal Note – Committee Amendment**



# 124th MAINE LEGISLATURE

**LD 5000**

**LR 9999(02)**

## An Act to Provide Sample Fiscal Notes

**Fiscal Note for Bill as Amended by Committee Amendment " "**

**Committee: Health and Human Services**

**Fiscal Note Required: Yes**

### Fiscal Note

|                                   | <b>2009-10</b> | <b>2010-11</b> | <b>Projections<br/>2011-12</b> | <b>Projections<br/>2012-13</b> |
|-----------------------------------|----------------|----------------|--------------------------------|--------------------------------|
| <b>Net Cost (Savings)</b>         |                |                |                                |                                |
| General Fund                      | \$105,000      | \$150,000      | \$155,000                      | \$160,000                      |
| <b>Appropriations/Allocations</b> |                |                |                                |                                |
| General Fund                      | \$105,000      | \$150,000      | \$155,000                      | \$160,000                      |
| Other Special Revenue Funds       | \$0            | \$45,000       | \$45,000                       | \$45,000                       |
| <b>Revenue</b>                    |                |                |                                |                                |
| Other Special Revenue Funds       | \$0            | \$45,000       | \$45,000                       | \$45,000                       |

### Fiscal Detail and Notes

The bill includes a General Fund appropriation of \$105,000 in fiscal year 2009-10 and \$150,000 in fiscal year 2010-11 to the Department of Testing for a Senior Tester position and a Tester I position to prepare and conduct the tests required in section 2 of the bill. A \$45 fee on testing beginning in fiscal year 2010-11 will generate \$45,000 in Other Special Revenue Funds to fund an additional Tester I position in FY 2011.

## **Sample Fiscal Note – Floor Amendment**



# 124th MAINE LEGISLATURE

**LD 5000**

**LR 9999(03)**

## An Act to Provide Sample Fiscal Notes

### Fiscal Note for House Amendment "A" to Committee Amendment "A"

**Sponsor: Rep. Sample**

**Fiscal Note Required: Yes**

### Fiscal Note

|                                   | <b>2009-10</b> | <b>2010-11</b> | <b>Projections</b> |                |
|-----------------------------------|----------------|----------------|--------------------|----------------|
|                                   |                |                | <b>2011-12</b>     | <b>2012-13</b> |
| <b>Net Cost (Savings)</b>         |                |                |                    |                |
| General Fund                      |                | (\$20,000)     | (\$35,000)         | (\$35,000)     |
| <b>Appropriations/Allocations</b> |                |                |                    |                |
| General Fund                      |                | (\$20,000)     | (\$35,000)         | (\$35,000)     |
| Other Special Revenue Funds       |                | \$0            | \$35,000           | \$35,000       |
| <b>Revenue</b>                    |                |                |                    |                |
| Other Special Revenue Funds       |                | \$0            | \$35,000           | \$35,000       |

### Fiscal Detail and Notes

This amendment increases the testing fee by \$35 to \$80 per test, dedicates a Tester I position that was previously to be funded by the General Fund and delays that position start date until July 1, 2010. As amended, the bill includes one Senior Tester position plus related expenses effective July 1, 2009 funded from the General Fund and two Tester I positions effective July 1, 2010 funded from dedicated revenues.

## **Sample Fiscal Note – Final (Engrossed Bill)**



# 124th MAINE LEGISLATURE

**LD 5000**

**LR 9999(04)**

## An Act to Provide Sample Fiscal Notes

### Fiscal Note for Bill as Engrossed with:

**C "A" (H-456)**

**H "A" (H-123) to C "A" (H-456)**

**Committee: Health and Human Services**

### Fiscal Note

|                                   | <b>2009-10</b> | <b>2010-11</b> | <b>Projections<br/>2011-12</b> | <b>Projections<br/>2012-13</b> |
|-----------------------------------|----------------|----------------|--------------------------------|--------------------------------|
| <b>Net Cost (Savings)</b>         |                |                |                                |                                |
| General Fund                      | \$85,000       | \$115,000      | \$120,000                      | \$125,000                      |
| <b>Appropriations/Allocations</b> |                |                |                                |                                |
| General Fund                      | \$85,000       | \$115,000      | \$120,000                      | \$125,000                      |
| Other Special Revenue Funds       | \$0            | \$80,000       | \$80,000                       | \$80,000                       |
| <b>Revenue</b>                    |                |                |                                |                                |
| Other Special Revenue Funds       | \$0            | \$80,000       | \$80,000                       | \$80,000                       |

### Fiscal Detail and Notes

The bill includes a General Fund appropriation of \$85,000 in fiscal year 2009-10 and \$115,000 in fiscal year 2010-11 to the Department of Testing for a Senior Tester position plus related expenses effective July 1, 2009 to prepare and conduct the tests required in section 2 of the bill. An \$80 fee on testing beginning in fiscal year 2010-11 will generate \$80,000 in Other Special Revenue Funds to fund two Tester I positions effective July 1, 2010.

## **APPENDIX F**

### **Guidelines for Department/Agency Fiscal Estimate Preparation**

# **Guidelines for Department/Agency Fiscal Estimate Preparation**

State departments and agencies (hereafter referred to as agencies) play an important role in the fiscal note process. OFPR has formalized the input of agencies in this process by requesting from each agency an estimate of the fiscal impact of each bill or amendment that impacts that agency. The following information is intended to guide each agency in responding to OFPR.

## **I. Agency Responsibilities for Responding on Bills and Amendments**

Every Legislative Document (LD) and amendment must be responded to, in writing by the agency that is affected regardless of whether the agency concludes that the legislative document does or does not have a fiscal impact. In most cases, the analyst working with the agency will call, fax or E-mail the agency to notify the agency of the bills and amendments affecting the agency. However, the analyst's call or contact with the agency is a courtesy and should not be relied upon. The ultimate responsibility for getting fiscal estimate information to OFPR lies with the agency.

## **II. Timing Deadlines for Responses**

OFPR needs a response to all legislative documents (including amendments) within five working days of their release to the general public. If this deadline cannot be met, the OFPR analyst assigned to your agency (see Appendix D for list) should be informed as to when the fiscal estimate will be completed and forwarded.

Each agency should be aware that there will be times during the session (particularly near the end of the session) when the agency will not have five working days to respond to certain LDs, new drafts and amendments (i.e., when an immediate response is needed). An OFPR analyst will notify each agency by phone when these situations arise.

## **III. Objectivity and Completeness of Responses**

All fiscal estimates must be objective and accurate. An agency's response should not be slanted to influence the policy-making process, which involves the elected representatives of the people of the State of Maine. Rather, the agency's response must be completely factual.

- Any assumptions used in preparing the fiscal estimate should be clearly delineated.
- The agency's fiscal estimate should quantify the LD's impact in dollar terms.
- When the agency believes the LD does have a fiscal impact, the fiscal estimate should include the following:

A breakdown of any appropriation or allocation needed, including the following:

- Program Name and Number(s)
- Fund(s)
- Fiscal Year(s)

-Position Count\* and Type of Count (if any)

-Personal Services (if any)

-All Other (if any)

-Capital Expenditures (if any)

-Totals

\* When a new position is being requested the agency must include the projected hire date and the job title, range, and justification if other than the first step is used to calculate the salary costs of the new position.

Revenue increases/decreases by fund and fiscal year.

A brief description of the fiscal impact, including any and all assumptions made.

Umbrella, unit, program and appropriation number(s) for any appropriation/allocation estimate.

Any other information needed to fully explain the agency's estimate.

If it is difficult to specify the fiscal impact, the best available estimate should be forwarded. A range can be used rather than a specific number if it represents the "best" data available.

#### **IV. Future Impacts**

5 M.R.S.A., §1665 requires agencies to submit an estimate of expenditures and revenues for the current biennium and the following biennium. For the 124th Legislature, this means that agencies must estimate expenditures and revenue through fiscal year 2012-13 and submit that estimate to the State Budget Officer. This information must also be submitted to OFPR.

#### **V. Municipal Mandates**

In 1992, Maine's voters approved a constitutional amendment requiring the State to fund 90% of the cost of state mandates on local units of government. This has significant implications for the fiscal note process. Many local government costs resulting from legislation have effectively become state government costs. Therefore, it is very important that each agency review bills affecting its areas of responsibility for their potential as state mandates and, at a minimum, identify the requirement(s) in the bill that may result in additional local expenditures for local governmental units. If an agency has data available to estimate the additional local costs, that information should be included as well.

#### **VI. Submitting Fiscal Estimates**

Forms to submit fiscal estimates are available from OFPR in hardcopy or Microsoft Excel file format. (A sample copy of the forms is included in Appendix G.) Agencies may create their own templates and forms as long as all the necessary information is included in approximately the same format. Estimates may be submitted by fax, e-mail or hardcopy whichever is most convenient.

## **APPENDIX G**

### **Suggested Form for Department/Agency Fiscal Estimate Preparation**

## Department/Agency Fiscal Estimate Form - Summary

12/30/2008  
124th

Department Name  
Agency Code  
Fiscal Estimate Compiled by  
Date Submitted to OFPR  
Legislature  
LD #  
LR # (if no LD)  
Item #

## Bill Title

## ANSWER

[Redacted]

**Item Type (Original Bill or Amendment)**

### **For Amendments:**

Does amendment change the fiscal impact? (Yes or No)

Is fiscal estimate incremental or does it replace original bill's estimate? (I or R)

## Summary of Impact

**Select One or More of the Following:** (Please explain in text box at bottom regardless of selection)

[REDACTED]

## No Fiscal Impact

\_\_\_\_\_

### **Minor Cost/Minor Revenue Decrease (Costs can be absorbed - no change to budget)**

[Redacted]

### **Minor Savings/Minor Revenue Increase (No change to budget)**

1. **What is the name of the person you are referring to?**

### **Fiscal Impact** (Complete Fiscal Impact Detail - next tab)

## State Mandate

1. **What is the name of the person you are referring to?**

### **Other Fiscal Impacts (Bond Issue, Referendum or Correctional/Judicial Impacts)**

**Department/Agency Text Box:**

Include assumptions in cost, savings or revenue impacts. Describe any new responsibilities. If mandate, indicate new requirements for local units of government.

## Department/Agency Fiscal Estimate Form - Detail

|          |
|----------|
| 0        |
| 0        |
| 0        |
| 1/0/1900 |
| 124th    |
| 0        |
| 0        |
| 0        |

Department Name  
Agency Code  
Fiscal Estimate Compiled by  
Date Submitted to OFPR  
Legislature  
LD #  
LR # (if no LD)  
Item #

### Bill Title

0

**Title:** Program Title

### **Text Box for Initiative Description or "Blippies"/Appropriation or Allocations Paragraphs:**

1. **What is the primary purpose of the study?**

**Personal Services Section:** (Please attach excel spreadsheet for detail estimate exported from BFMS system to justify requested amount. Remember that BFMS may not be updated for most recent salary and benefit rates. This can be compensated for by starting the position a step higher than otherwise anticipated. Contact your budget analyst for help producing an estimate thru BFMS.)

### **Total - Personal Services**

## All Other & Capital Expenditure Information

**Account #** **C&O Code**

### Total - All Other

### Total - Capital Expenditures

### **Revenue Information:**

**Account #**    **C&O Code**

| 2008-09 | 2009-10 | 2010-11 | 2011-12 | 2012-13 |
|---------|---------|---------|---------|---------|
|         |         |         |         |         |
|         |         |         |         |         |
|         |         |         |         |         |

### **Transfer Information:**

**Account #**    **C&O Code**

**From Acct. #**   **To Account #**

| 2008-09 | 2009-10 | 2010-11 | 2011-12 | 2012-13 |
|---------|---------|---------|---------|---------|
|         |         |         |         |         |
|         |         |         |         |         |
|         |         |         |         |         |

### Detail of Assumptions:

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